

PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION I June St. Clair Atkinson, Ed.D., State Superintendent WWW.NCPUBLTCSCHOOLS,ORG

March 3, 2011

MEMORANDUM

TO: Directors, Exceptional Children Programs

Directors, Charter Schools

FROM: Mary N. Watson, Director

RE: Service Animals

Attached are copies of the new Americans with Disabilities Act regulations regarding service animals and the NC General Statutes section on service animals. Title II of the ADA and its associated regulations (28 CFR Part 35) require government entities, including public schools, to make reasonable modifications to programs and services in order to allow access for persons with disabilities. Service animals are recognized as reasonable modifications or accommodations under Title II of the ADA. The US Department of Education has not issued guidelines or policies about service animals in schools.

If you have questions, please contact Kate Neale at 919.807.3979 or kneale\a{dpi.state.nc.us; or Ira Wolfe at 919.8073976 or kneale\a{dpi.state.nc.us; or Ira Wolfe at 919.8073976 or kneale\a{dpi.state.nc.us; or kneale\aktate.nc.us.

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Attachments

ADA Regulations Relative to Service Animals

Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services (as amended by the final rule published on September 15, 2010; effective March 15, 2011)

Subpart A-General

§ 35.104 Definitions.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

§ 35.136 Service animals

- (a) Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
- (b) *Exceptions*. A public entity may ask an individual with a disability to remove a service animal from the premises if—
 - (1) The animal is out of control and the animal's handler does not take effective action to control it; or
 - (2) The animal is not housebroken.
- (c) If an animal is properly excluded. If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.
- (d) Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective

performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

- (e) Care or supervision. A public entity is not responsible for the care or supervision of a service animal.
- (f) Inquiries. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
- (g) Access to areas of a public entity. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.
- (h) Surcharges. A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.
- (i) Miniature horses.
 - (1) Reasonable modifications. A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.
 - (2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—
 - (i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
 - (ii) Whether the handler has sufficient control of the miniature horse;
 - (iii) Whether the miniature horse is housebroken; and
 - (iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Other requirements. Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

North Carolina General Statutes Chapter 168. Persons with Disabilities.

Article 1. Rights.

§ 168-4.2. May be accompanied by service animal.

- (a) Every person with a disability has the right to be accompanied by a service animal trained to assist the person with his or her specific disability in any of the places listed in G. S. 168-3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3.
- (b) An animal in training to become a service animal may be taken into any of the places listed in G.S. 168-3 for the purpose of training when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training. The trainer shall be liable for any damage caused by the animal while using a public conveyance or on the premises of a public facility or other place listed in G.S. 168-3. (1985, c. 514, s. 1; 1987, c. 401, s. 1; 1995, c. 276, s. 1; 1997-443, s. 11A.118(a); 2004-203, s. 62(a); 2005-450, s. 1.)

§ 168-4.3. Training and registration of service animal.

The Department of Health and Human Services, shall adopt rules for the registration of service animals and shall issue registrations to a person with a disability who makes application for registration of an animal that serves as a service animal or to a person who is training an animal as a service animal.

The rules adopted regarding registration shall require that the animal be trained or be in training as a service animal. The rules shall provide that the certification and registration need not be renewed while the animal is serving or training with the person applying for the registration. No fee may be charged the person for the application, registration, tag, or replacement in the event the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities. (1985, c. 514, s. 1; 1987, c. 401, s. 2; 1997-443, s. 11A.118(a); 2004-203, s. 62(b); 2005-450, s. 1.)

§ 168-4.4. Responsibility for service animal.

Neither a person with a disability who is accompanied by a service animal, nor a person who is training a service animal, may be required to pay any extra compensation for the animal. The person has all the responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any animal, including liability for any damage done by the animal. (1985, c. 514, s. 1; 2004-203, s. 62(c); 2005-450, s. 1.)

§ 168-4.5. Penalty.

It is unlawful to disguise an animal as a service animal or service animal in training. It is unlawful to deprive a person with a disability or a person training a service animal of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, or of any rights or privileges granted the general public with respect to being accompanied by animals or to charge any fee for the use of the service animal. Violation of this section shall be a Class 3 misdemeanor. (1985, c. 514, s. 1; 1987, ch. 401, s. 3; 1993, c. 539, s. 1120; 1994, Ex. Sess., c. 24, s. 14(c); 2005-450, s. 1.)

§ 168-4.6. Donation of dogs for training.

Dogs impounded by a local dog warden that are not redeemed shall be donated to a nonprofit agency engaged in the training of service dogs, upon the agency's request. (1985, c. 514, s. 1; 2005-450, s. 1.)



Service Animals & the Americans with Disabilities Act

Under new regulations, the only species of service animal recognized under Title II and Title III of the ADA are <u>dogs</u> and <u>miniature horses</u>. ¹

By state and federal law, service animals are allowed to go almost everywhere their handler goes. Unfortunately, people with disabilities often face problems when they are out and about with their service animal.

Title II and Title III of the Americans with Disabilities Act

The ADA is a federal civil rights law for people with disabilities ²

<u>Title II applies to state and local government programs and services</u>.³

 prohibits state and local government entities from discriminating on the basis of disability in its programs or services, including classes through a parks and recreation department, town hall meetings, and tax departments

<u>Title III applies to private businesses that are open to the public.</u>⁴

- o prohibits a "place of public accommodation" from denying goods or services, offering only unequal or separate benefits, or offering services in a segregated setting because a person has a disability or is associated with a person with a disability. Special programs for people with disabilities can still be offered, as long as people with disabilities are not excluded from the programs offered to all other people.
- Public accommodations are places, buildings, or outdoor spaces that a person can enter with or without a fee. Examples include: hotels, restaurants, theaters, stadiums, auditoriums, bakeries, clothing stores, video stores, professional offices, gas stations, funeral parlors, stations used for public transportation, museums, gardens, galleries, parks, zoos, private schools, homeless shelters, day care centers, gymnasiums, and golf courses. ⁵ Public accommodations do not include "private clubs" or religious entities. ⁷

 $^{^{1}}$ 28 C.F.R. § 35.101, et seq.; 28 C.F.R. § 36.101, et seq. (as amended by the final rule published on Sept. 15, 2010). 2 42 U.S.C. § 12101, et seq.

³ 42 U.S.C. §§ 12131 to 12165. Title II of the ADA has similar prohibitions to that of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. §§ 701 to 796.

⁴ 42 U.S.C. §§ 12181 to 12189.

⁵ 42 U.S.C.A. § 12181(7).

What is a "service animal" under the ADA?

- Only a dog or a miniature horse can qualify as a "service animal" under Title II and
 Title III of the ADA. Other species of animals, such as reptiles, birds, or cats, do not qualify
 as service animals under the ADA.
- Federal regulations have narrowed the definition of a "service animal" to mean "<u>any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability</u>, including a physical, sensory, psychiatric, intellectual, or other mental disability."
 8 The type of work or task a service animal performs must be related to the handler's disability to be a service animal.

What type of work or tasks does a service animal perform?

Service animals can be trained to work and perform a variety of functions

"Examples of work or tasks include, but are not limited to:

- assisting individuals who are blind or have low vision with navigation and other tasks,
- alerting individuals who are deaf or hard of hearing to the presence of people or sounds,
- · providing non-violent protection or rescue work,
- pulling a wheelchair,
- · assisting an individual during a seizure,
- alerting individuals to the presence of allergens,
- retrieving items such as medicine or the telephone,
- providing physical support and assistance with balance and stability to individuals with mobility disabilities, and
- helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors."¹⁰



Is an "emotional support" or "comfort" animal considered a service animal?

No. Under the revised ADA regulations, <u>emotional support, well-being, comfort, companionship, or deterrence of criminal activity do not constitute work or tasks</u> for the purposes of qualifying an animal as a service animal.

Trained to respond and assist → service animal Not trained to respond → comfort animal

⁶ 42 U.S.C.A. § 12187. A private club is one in which membership must be voted on by other members.

⁷ 42 U.S.C.A. § 12187.

⁸ 28 C.F.R. § 35.104 and 28 C.F.R. § 36.104. (emphasis added).

⁹ 28 C.F.R. § 35.104 and 28 C.F.R. § 36.104

¹⁰ 28 C.F.R. § 35.104 and 28 C.F.R. § 36.104.

Example: if a service animal senses that a person is about to have a psychiatric episode and it is trained to respond, by nudging, barking, or removing the individual to a safe location until the episode subsides, then the animal has indeed performed a task or done work on behalf of the individual with the disability, as opposed to merely sensing an event."¹¹



Who can use a service animal?

 A person with a disability is entitled to use a service animal, <u>as long as there is a **direct link**</u> between the task an animal performs and the person's disability.¹²

A disability is defined as "a physical or mental impairment that substantially limits one or more major live activities." Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working." A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions." ¹⁵

Who is responsible for a service animal?

- The care or supervision of a service animal is solely the responsibility of the handler.
- However, part of the accommodation of the service animal may be identifying a reasonable place for the handler to care for the dog, when necessary.

Should a service animal wear a vest or a special collar?

- A service animal must be under the control of its handler and "have a harness, leash or other tether, unless either the handler is unable because of a disability to use [a tether], or the use of [a tether] would interfere with the animal's safe, effective performance of work or tasks."¹⁶ In cases where a leash or tether would interfere, "the service animal must be otherwise under the handler's control" by way of "voice control, signals or other effective means."¹⁷
- Although it is not required, you may find that you encounter fewer problems if your service animal is wearing a special vest or collar.

¹¹ Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Federal Register 56267 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 36).

¹² 28 C.F.R. § 35.104 and 28 C.F.R. § 36.104.

¹³ 42 U.S.C. §12102(1)(A).

¹⁴ 42 U.S.C. §12102(2)(A).

¹⁵ 42 U.S.C. §12102(2)(B).

¹⁶ 28 C.F.R. §36.302(4); 28 C.F.R. §35.136(d).

¹⁷ 28 C.F.R. §36.302(4); 28 C.F.R. §35.136(d).

Is it required to show documentation that his/her service animal is registered or certified?

No. There is no rule under the ADA that service animals must be registered or certified to be an official service animal. You cannot be required to show documentation (e.g. proof of certification, training, licensure, identification card, or registration) to prove that it is a service animal.¹⁸

If you are interested in registering your service animal: The Registration Application is available at http://www.ncdhhs.gov/dvrs/pdf/ServiceAnimalRegAppForm.pdf.

For more information contact the N.C. Division of Vocational Rehabilitation Service: (919) 733-0390

Where is a service animal allowed?

All areas of a government or business that serve the public "generally must allow [a] service animal to accompany people with disabilities in all areas of the facility where the public is normally allowed to go."¹⁹

"For example, in a hospital, it would be inappropriate to exclude a service animal from areas such as patient rooms, clinic, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from an operating room or burn units where the animal's presence may compromise a sterile environment."²⁰

CASE-IN-POINT: A patient wanted to bring her service animal with her into the emergency room. The Tennessee hospital said that no animals, including service animals, were allowed past the waiting room. The court said that this rule was wrong. Instead, hospitals and healthcare providers can only keep a service animal out of treatment areas when they can prove that a particular patient's service animal poses a risk that cannot be eliminated.²¹

CASE-IN-POINT: An Oregon hospital patient had her service animal in her hospital room. The hospital asked her to remove the dog because of its overwhelming smell. The dog also growled and snapped at hospital staff. Before asking that the dog leave, the hospital tried to accommodate the dog by putting an air filter in the room, by shutting the door to the room, by assigning staff allergic to the dog to other areas of the hospital, etc. Nothing worked. Although the dog was a service animal, the hospital was allowed to have the dog removed. The court said that the dog threatened the health and safety of others at the hospital. The court also pointed out that patient did nothing to

¹⁹ U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011).

²¹ Day v. Sumner Regional Health Systems, Inc. 2007 U.S. Dist. LEXIS 94615 (M.D. Tenn. 2007).

¹⁸ 28 C.F.R. §36.302(6); 28 C.F.R. §35.136(f).

²⁰ U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011).

help the hospital contain the smell or help with other problems related to the presence of the service animal. She also refused to close the door and complained about the noise from the air filter.²²

When can a service animal be excluded?

A person with a disability who uses a service animal has a right to the same service and treatment as someone who does not use a service animal. This means that <u>many "No Pet" or "No Animal" policies</u> do not apply to service animals.

However, a government entity or public accommodation **can exclude a service animal if**:

- (1) making such <u>modifications would fundamentally alter the nature of the entity</u>'s goods, services, facilities, privileges, advantages, or accommodations;
- (2) the safe operation of the entity would be jeopardized; or
- (3) such modifications would result in an undue financial or administrative burden."23

"Allergies or a fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility."²⁴

CASE-IN-POINT: A man wanted to take his service animal on a tour of a beer brewery in Texas. The brewery said no because they would get in trouble with the Food and Drug Administration if an animal got that close to their beer brewing process. The brewery was worried that animal hair might get into the beer. The court did not agree with the brewery's argument, and said that humans and animals were equally likely to get their hair in the beer.²⁵

 Allegations of a safety risk "must be based on actual risks rather than on mere speculation, stereotypes, or generalizations about individuals with disabilities."²⁶

CASE-IN-POINT: A doctor worked at a hospital in Illinois. The doctor wanted to use her service animal at work to pull her wheelchair and do other tasks for her, but the hospital said no. The court said that the hospital <u>had</u> to allow the doctor to use her service animal at work. The only places that the service animal was not allowed to go were operating rooms, coronary care units, dialysis units,

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²² Roe v. Providence Health System-Oregon, 655 F. Supp. 2d 1164 (D. Or. 2009).

²³ Sarah Price, *Employment Legal Briefings: Service Animals Under the ADA*, DBTAC Great Lakes ADA Center, Brief No. 15 (November 2010) at pg. 7. (c*iting* 28 C.F.R. §36.301(b); 28 C.F.R. §36.302(c)(1); 28 C.F.R. §36.303(a); 28 C.F.R. §35.130(b)(7); 28 C.F.R. §35.136; 28 C.F.R. §35.150(a)(3); 28 C.F.R. §35.164.)

²⁴ U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011). *See also Lockett v. Catalina Channel Express*, 496 F.3d 1061 (9th Cir. 2007).

²⁵ Johnson v. Gambrinus Co./Spoetzl Brewery, 116 F.3d 1052 (5th Cir. 1997).

²⁶ 28 C.F.R. §36.301(b); 28 C.F.R. §35.130(h).

intensive care units, and areas designated as infectious care or isolation areas. The court said that the general rule is that service animals can go anywhere their owners go unless the animals pose a greater hazard than the owners do in the same place.²⁷

When the animal is out of control or not house broken.

"A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control <u>and</u> the handler does not take effective action to control it, or (2) the dog is not housebroken."²⁸ For example, a service animal is out of control when it is barking continuously or snapping at others.

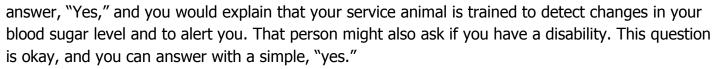
What questions can someone ask to find out if an animal is a service animal?

You may be asked two questions:

(1) whether a service animal is required because of a disability, and

(2) what work or task has the animal been trained to perform.²⁹

You should be prepared to describe how your service animal helps you and how the animal has been trained. For example, you are a person with diabetes that uses a service animal to detect your blood sugar level. Someone has asked whether your dog is a service animal. You would



If someone asks you what your disability is, that is inappropriate and you do not have to answer. It is your choice whether to give specific information regarding your disability. However, it should not be assumed that an entity and its' employees know about the types of tasks a service animal can perform because many service animals perform tasks that are not obvious to the general public.

CASE-IN-POINT: A woman in Washington attempted to challenge a business' written policy regarding service animals. The policy provided that, first, employees must look for visible identification that an animal was a service animal; if no such identification existed, the employee could inquire of the animal's owner what tasks or functions the animal performs that its owner cannot otherwise perform. The policy prohibited employees from asking about the specifics of a person's disability. The business' policy was upheld.³⁰

CASE-IN-POINT: After showing a casino security guard his service animal's identification card, a Delaware man refused to answer questions regarding the work or task his dog was trained to

³⁰ Grill v. Costco Wholesale Corp., 312 F. Supp. 2d 1349 (W.D. Wash. 2004).

²⁷ Branson v. West, 1999 U.S. Dist. LEXIS 7343 (N.D. Ill. 1999).

²⁸ U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011); 28 C.F.R. §36.302(c)(2)(i)-(ii); 28 C.F.R. §35.136(b)(1)-(2).

²⁹ 28 C.F.R. §36.302(6); 28 C.F.R. §35.136(f).

perform, alleging the questions violated his civil rights. The manager contacted the ADA information line, and confirmed that, while specific questions regarding a person's disability cannot be asked, questions regarding what task a service animal is trained to perform are permissible. The court found that the business did not violate the ADA.³¹

Can an individual be charged or asked to pay for the use a service animal?

No. A person with a disability who uses a service animal "cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals."³²

However, if a business generally charges a person for damages he or she caused to the business, a business may charge a person with a disability for the damages caused by that individual's service animal.³³

How is the ADA enforced? What remedies can be granted if a business violates the ADA?

The Department of Justice and other federal agencies, such as the Department of Education or Department of Transportation, enforce the ADA.³⁴ For the Department to investigate, an individual must file a complaint with the appropriate federal department's Office of Civil Rights within 180 days from the alleged discriminatory act.³⁵ The Department will investigate the complaint; it may attempt informal resolution with the parties, and issue a Letter of Findings depending on the investigation.³⁶

An individual can also bring a lawsuit in state and federal court. The remedies that can be granted depend upon whether the entity is covered under Title II or Title III.

- Violation under **Title II**: remedies include <u>injunctive relief</u> (the court can order the entity to do or refrain from doing something) and <u>compensatory damages</u> (money to pay back for <u>actual</u> loss, injury or harm).
- Violation under **Title III**: the only remedy a private individual can receive is <u>injunctive relief;</u> compensatory damages are not available.³⁷ However, if the Dept. of Justice decides to bring a lawsuit to vindicate the public interest against a Title III entity, a court can award a civil

³¹ *Thompson v. Dover Downs, Inc.*, 887 A.2d 458 (Del. Super. Ct. 2005).

³² U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011); 28 C.F.R. §36.302(8); 28 C.F.R. §35.136(h). (emphasis added).

³³ U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011); 28 C.F.R. §36.302(8); 28 C.F.R. §35.136(h).

³⁴ 28 C.F.R. §§ 35.170(c).

³⁵ 28 C.F.R. §§ 35.170(b).

³⁶ 28 C.F.R. §§ 35.172(b).

³⁷ 42 U.S.C.A. § 12188 and 2000a-3(a).

penalty of up to \$50,000 for the first violation and up to \$100,000 for each subsequent violation.³⁸

Punitive damages (money awarded as a punishment for a malicious act) are <u>not</u> available under Title II or Title III of the ADA.³⁹

Under both Title II and Title III of the ADA, attorneys fees are recoverable. 40

Do any laws, other than the ADA, discuss service animals?

- Yes, <u>Section 504 of the Rehabilitation Act</u> of 1973 is very similar to the ADA, but only applies if the entity is a recipient of federal funds (such as a federal grant or Medicaid).
- The <u>Fair Housing Act</u> provides for regulation of "assistance animals" in virtually all forms of housing, whether for sale or rent. ⁴¹ For a separate fact sheet regarding housing and assistance animals, please contact Disability Rights North Carolina.
- The <u>Air Carrier Access Act</u> was an amendment to the Federal Aviation Act that prohibits discrimination on the basis of disability by airlines and airports. ⁴² It provides regulations relating to air travel and service animals. In some ways, the Air Carrier Access Act has more strict criteria for service animals, and it should not be assumed that an animal that qualifies as a service animal under the ADA has the same access to airports and airlines.
- In North Carolina, there is a state law that protects your right to use a service animal in a public place. 43 Other states also have laws regarding service animals.

What happens if a state or local law conflicts with the ADA?

If a state law conflicts with the ADA, it should <u>not</u> be enforced unless it provides great or equal protection for individuals with disabilities than is provided by the ADA.⁴⁴ For example, if a local health code does not allow a food establishment to have animals on the premises, the establishment still must allow service animals in public areas based on the ADA.

³⁸ 42 U.S.C. §12188(b)(2).

³⁹ 42 U.S.C. §12188(b)(4); *Barnes v. Gorman*, 536 U.S. 181 (2002).

⁴⁰ 28 C.F.R. § 35.175; 28 C.F.R. §36.505.

⁴¹ 42 U.S.C.A. §§ 3601 *et seq.*

⁴² 49 U.S.C.A. §41705.

⁴³ N.C. Gen. Stat. §§ 168-4.2 thru 4.4 (2005).

⁴⁴ U.S. CONST. AMEND. XIV, §5; *Tennessee v. Lane*, 541 U.S. 509 (2004)(regarding fundamental rights).

Sample Letter for Place of Public Accommodation

Date

Dear Business Owner:

I am a person with a disability who uses a service animal. Under the Americans with Disabilities Act, I have the right to use my service animal in areas that are open to the public, including those of <u>type of business</u>. This letter will provide you with information on my rights.

The Americans with Disabilities Act protects me from discrimination based on my disability. ⁴⁵ Places of public accommodation are forbidden to discriminate against me and other persons with disabilities. ⁴⁶ Public accommodations are any place, building, or outdoor space that a member of the public can enter with or without a fee. Some examples of places of public accommodations include: hotels, restaurants, theaters, auditoriums, bakeries, clothing stores, professional offices of doctors, dentists, lawyers, gas stations, funeral parlors, stations used for public transportation, museums, galleries, parks, zoos, private schools, homeless shelters, day care centers, and gym. ⁴⁷

A disability is defined as a	physical or mental impairment that substantially limits one or more major life
activities of an individual. ⁴⁸	I am a person with a disability because I am substantially limited in the major life
activity/activities of	My service animal is individually trained to assist me
by	

Denying people with disabilities service and/or providing us with a lesser service than is provided to persons without disabilities is discrimination prohibited by the ADA. Unless an accommodation for a person with a disability would fundamentally alter the nature of your services or result in significant difficulty or expense, you must: (1) modify your policies, practices, or procedures; (2) provide auxiliary aids and services; and (3) remove architectural and communication barriers when readily achievable to ensure that people with disabilities enjoy equal access to your services or facility. 50

An example of a reasonable modification to your facility's policies includes permitting the use of service animals in your facility.⁵¹ Service animals are defined by the ADA as any <u>dog that is individually trained to do</u> <u>work or perform tasks for the benefit of an individual with a disability</u>, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁵² Along with dogs, the ADA recognizes miniature horses as service animals.⁵³

⁴⁵ 42 U.S.C. § 12101, et seq.

⁴⁶ 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.

⁴⁷ 42 U.S.C.A. § 12181(7).

⁴⁸ 42 U.S.C. § 12102(1).

⁴⁹ See 42 U.S.C. § 12182(b)(1)(A).

⁵⁰ See 42 U.S.C. § 12182(b)(2)(A).

⁵¹ See 28 C.F.R. § 36.302(c).

⁵² 28 C.F.R. § 36.104.

⁵³ 28 C.F.R. § 36.302(c)(9)(i).

Please be advised that the ADA does not require me to register my service animal with a state or federal agency to qualify it as a "real" or "official" service animal, nor is there a mandatory service animal registration program in North Carolina. Thus, you may not require any further verification that my animal is a service animal beyond asking what tasks it has been individually trained to do.

If you are hesitant to allow my service animal in your business because you fear that it will harm the health or safety of other patrons, you must be able to demonstrate both the severity of the risk posed and the likelihood of an injury actually occurring. ⁵⁴ For instance, if you are concerned about admitting a service animal into a "dander free" area or because of allergies, you must conduct an individualized assessment to determine the risk posed by the service animal and whether reasonable modifications may be undertaken to mitigate the risk. ⁵⁵ Courts generally find that service animals are to be allowed in restaurants, hospitals and other areas open to the public, regardless of other's allergies, immunodeficiencies, or fears related to dogs. ⁵⁶ Also, please be advised that many courts have found a blanket policy banning all animals, such as "no dogs" policies, are discriminatory under the ADA if exceptions are not made for service animals. ⁵⁷ As demonstrated by the cases referenced in the footnotes below, places of public accommodation must satisfy a very high burden before excluding service animals from their facility or particular locations in their facility.

If you have any questions or would like more information about your responsibility to accommodate persons with disabilities, please visit the Department of Justice ADA website regarding service animals at http://www.ada.gov/qasrvc.htm or consult with your attorney. Your professional association may also have information about accommodating clients. You may also want to consult with your accountant about the positive tax benefits available for providing accommodations under the ADA.

Please contact me in writing or by phone within ten business days to let me know	of your service animal
accommodation policy going forward. My number is	and my address is
I look forward to hearing from you.	
Sincerely,	
Your Name	

⁵⁴ See 28 C.F.R. § 36.208.

⁵⁵ See 28 C.F.R. § 36.208; see also Lockett v. Catalina Channel Express, 496 F.3d 1061 (C.D. Cal. 2007), aff'd, 496 F.3d 1061 (9th Cir. 2007) (statement that lounge was reserved as "dander free" insufficient under ADA; ferry boat required to attempt modification of policies or procedures to allow service dog in "dander free" zone).

policies or procedures to allow service dog in "dander free" zone). ⁵⁶ Branson v. West, 1999 U.S. Dist. LEXIS 7343 (N.D. Ill. 1999) (ruling that service animal is allowed in hospital setting; was reasonable to restrict service animal from hospital operating room).

⁵⁷ See Day v. Sumner Regional Health Systems, Inc., 2007 U.S. Dist. LEXIS 94615 (M.D.Tenn. 2007) (finding that service animals in ER treatment area are not, as matter of law, a direct threat to health or safety).

Sample Letter for Government Program or Service

Date

Dear Government Program Director:

I am a person with a disability who uses a service animal. Under the Americans with Disabilities Act, I have the right to use my service animal when accessing local and state government programs and services. This letter will provide you with information on my rights.

The Americans with Disabilities Act protects me from	n discrimination based on my disability. ⁵⁸ A disability is
defined as a physical or mental impairment that substa	antially limits one or more major life activities of an
individual. ⁵⁹ I am a person with a disability because I	am substantially limited in the major life
activity/activities of	My service animal is individually trained to assist me
by	

Denying people with disabilities service and/or providing us with a lesser service than is provided to persons without disabilities is discrimination prohibited by the ADA. Unless an accommodation for a person with a disability would fundamentally alter the nature of your services or result in significant difficulty or expense, you must: (1) modify your policies, practices, or procedures; (2) provide auxiliary aids and services; and (3) remove architectural and communication barriers when readily achievable to ensure that people with disabilities enjoy equal access to your services or facility.

An example of a reasonable modification to your program's policies includes permitting the use of service animals in your facility. Service animals are defined by the ADA as any <u>dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Along with dogs, the ADA recognizes miniature horses as service animals. Along with dogs, the ADA recognizes miniature horses as service animals.</u>

Please be advised that the ADA does not require me to register my service animal with a state or federal agency to qualify it as a "real" or "official" service animal, nor is there a mandatory service animal registration program in North Carolina. Thus, you may not require any further verification that my animal is a service animal beyond asking what tasks it has been individually trained to do.

If you are hesitant to allow my use of a service animal because you fear that it will harm the health or safety of other patrons, you must be able to demonstrate both the severity of the risk posed and the likelihood of an injury actually occurring. For instance, if you are concerned about admitting a service animal into a "dander free" area or because of allergies, you must conduct an individualized assessment to determine the risk posed by the

⁵⁸ 42 U.S.C. § 12101, et seq.

⁵⁹ 42 U.S.C. § 12102(1).

⁶⁰ See 42 U.S.C. § 12182(b)(1)(A).

⁶¹ See 42 U.S.C. § 12182(b)(2)(A).

⁶² See 28 C.F.R. § 36.302(c).

^{63 28} C.F.R. § 36.104.

⁶⁴ 28 C.F.R. § 36.302(c)(9)(i).

⁶⁵ See 28 C.F.R. § 36.208.

service animal and whether reasonable modifications may be undertaken to mitigate the risk. ⁶⁶ Courts generally find that service animals are to be allowed in restaurants, hospitals and other areas open to the public, regardless of other's allergies, immunodeficiencies, or fears related to dogs. ⁶⁷ Also, please be advised that many courts have found a blanket policy banning all animals, such as "no dogs" policies, are discriminatory under the ADA if exceptions are not made for service animals. ⁶⁸ Government programs and services must satisfy a very high burden before excluding service animals from their facility or particular locations in their facility.

If you have any questions or would like more information about your responsibility to accommodate persons with disabilities, please visit the Department of Justice ADA website regarding service animals at http://www.ada.gov/qasrvc.htm or consult with your attorney. Your professional association may also have information about accommodating clients. You may also want to consult with your accountant about the positive tax benefits available for providing accommodations under the ADA.

Please contact me in writing or by phone within ten business days to let me know o	of your service animal
accommodation policy going forward. My number is	and my address is
I look forward to hearing from you.	
Sincerely,	
Your Name	

⁶⁶ See 28 C.F.R. § 36.208; see also Lockett v. Catalina Channel Express, 496 F.3d 1061 (C.D. Cal. 2007), aff'd, 496 F.3d 1061 (9th Cir. 2007) (statement that lounge was reserved as "dander free" insufficient under ADA; ferry boat required to attempt modification of policies or procedures to allow service dog in "dander free" zone).

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⁶⁸ See Day v. Sumner Regional Health Systems, Inc., 2007 U.S. Dist. LEXIS 94615 (M.D.Tenn. 2007) (finding that service animals in ER treatment area are not, as matter of law, a direct threat to health or safety).

Step-By-Step Guide to Advocate for Your Right to a Service Animal

#1 Provide advance notice.

While providing advance notice that you will be using a service animal is a choice and is <u>not</u> required, it may help make it easier and avoid a conflict. It may be helpful to call the location to notify them that you will be bringing a service animal with you.

#2 If you are told your service animal is not welcome, get a second opinion.

Politely ask the employee to speak to their supervisor or the business owner. Explain that you use a service animal because you are a person with a disability. You can also refer the government agency or business owner to the U.S. Department of Justice ADA Information Line at 1-800-514-0301 for more information about service animals. It may be helpful to carry a copy of a Department of Justice Fact sheet with you to facilitate your discussions with the business.

#3 If you were denied access, send the government department or business a letter that explains your right to a service animal.

You can use the sample letter that included in this packet, which provides the legal framework to assert your rights under the ADA, as a model.

#4 Follow up on your letter.

After a few days, follow up on your letter with a phone call. Ask if the program director or business owner has read the letter, and if he or she has changed his or her mind about allowing you to use your service animal to access the program or public accommodation. If the answer is still no, ask why not. Ask if he or she understands their obligations under the ADA. Express to the program director or business owner that you are prepared to file a complaint with the U.S. Department of Justice, the government agency that enforces the ADA. Ask again if he or she will reconsider and allow you to use your service animal.

#5 If you are still unable to have your service animal with you, ask for help.

There are several avenues for you to seek assistance in gaining access to government programs and services and public accommodations.

- **a. Contact an attorney.** Call Disability Rights NC at 1-877-235-4210, your local Legal Aid of North Carolina office, or a private attorney to help you stand up for your right to use your service animal. We cannot guarantee that Disability Rights NC or another attorney will take your case.
- **b. File a complaint with the U.S. Department of Justice.** If you have questions about how to file a complaint or would like to request a complaint packet, contact the Department's ADA Information Line at 1-800-514-0301 or visit its website at www.ada.gov.

The documents in this packet contain general information for <u>educational purposes and</u> <u>should not be construed as legal advice.</u> The sample letter and information is intended to provide you with tools to help you self-advocate and does not create an attorney-client relationship between you and Disability Rights NC. Disability Rights NC does not make any representation regarding the merits of your case or its projected outcome by providing these materials. This information is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney.

Created in 2012 by Disability Rights NC.

Disability Rights NC is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.